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ABSTRACT

This publication, divided into five sections, reviews Title IX regulations and provides interpretations to help educators achieve educational equity in their schools. An overview of Title IX regulations discusses persons covered by the legislation, admission and recruitment policies, treatment of students, and employment practices. The second section presents answers to basic questions about Title IX. The third section contains illustrative situations, stating problems, status, and recommendations for practices regarding compliance, employment policies, pregnancy, athletics, access to courses, honors and awards, differential treatment, admissions policies, physical education, and counseling materials. A legal update on Title IX, citing several legal cases, is given in the fourth section. The fifth section contains suggestions for administrators. (CJ)

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Title IX: Implications for Education of Women

Frank D. Aquila

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FRANK D. AQUILA

Frank Aquila is director of Staff and Organization Development and Personnel for the Cleveland Public Schools, where he is presently developing a management system accountability model directly linked to the effectiveness of principals and teachers. From 1976 to 1980 he served as associate professor of school administration at Indiana University where he was co-director of the Center for Urban and Multicultural Education. In this capacity he coordinated several grants funded by the U.S. Department of Education. Among them was The Great Lakes Sex Equity Assistance Center, one of ten regionally based centers facilitating the implementation of Title IX requirements in public schools. He has served as a teacher, assistant principal, principal, and supervisor in Ohio schools.

He has published numerous articles and seven books including *Changing Times: Sex Desegregation and American Education; Race Equity in Education: The History of School Desegregation 1849-1979; School Desegregation: On the Cutting Edge;* and *A Quest for Equality.*

Derek L. Burleson, Series Editor

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Title IX: Implications for Education of Women

By Frank D. Aquila

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Introduction

Title IX of the Education Amendments was enacted in 1972 in a political climate that was ripe for legislation that would eliminate sex discrimination in education. The passage of major civil rights legislation in the Sixties formed a backdrop for Title IX. The debate over the Equal Rights Amendment to the Constitution added to public awareness of sex discrimination. Sexist policies and practices, previously unchallenged, began to be attacked by women's rights advocates. Thus, the elimination of sex discrimination in education became a major national political issue in the Seventies. Title IX of the Education Amendments of 1972 became the cornerstone of the ongoing effort to eliminate sexism in education.

Women's rights advocates viewed state and local education agencies as apathetic to the issues of sex discrimination, so they focused their efforts on securing federal legislation that would force local education agencies to end sex inequality in education. There was considerable support for legislative action at the federal level from women in key federal positions. These women's activists provided a support system to encourage the implementation of women's equity through Title IX, the Women's Educational Equity Act, and related legislation.

There is a history of legislation and executive orders at the federal level that supports equity for women. The Classification Act of 1923 equalized pay for male and female federal workers. President Kennedy's formation of the Commission on the Status of Women in 1961 was followed by Executive Order 10980 that prohibited discrimination in the hiring and promotion of women within the federal bureaucracy. The Equal Pay Act of 1963 and the landmark Title VII of the Civil

Rights Act of 1964 strengthened the cause for women's rights. Executive Order 11246 provided the underpinning for the Women's Equity Action League's demand for federal action to eliminate sex bias in educational institutions. By 1969, when President Nixon formed a Task Force on Women's Rights and Responsibilities, the groundwork had been laid.

The issue of sex discrimination was gaining legitimacy not only among educators but also by educational researchers. Empirical evidence was gathered which supported the charges of sex discrimination in education. No longer did women's rights advocates have to rely solely on personal experiences to substantiate their positions.

Arlene Horowitz and Bernice Sandler, working with a few dedicated women in the Women's Equity Action League and supported by U.S. Representative Patsy Mink and Senator Walter Mondale, were able to have the Women's Educational Equity Act (WEEA) passed. Congress viewed WEEA as an inoffensive, non-threatening piece of legislation and did not consider it as a force in eliminating sex bias in education. Yet, this six million dollar program was to become a vital support system for its more controversial sister legislation, Title IX of the Education Amendments of 1972. WEEA provided the opportunity for women, who were concerned about sexism in education, to meet and to develop plans and strategies for change. The legacy of WEEA was the development of an effective women's lobby on educational issues that played a crucial role in the debate surrounding the enactment of Title IX, which President Nixon signed into law on 23 June 1972.

With the enactment of Title IX began the long process of developing the regulations to enforce it. The Office for Civil Rights (OCR) had the major responsibility for drafting the implementation regulations, but a good deal of inter-departmental controversy hindered the drafting of these regulations. Unfortunately, Title IX regulations were not given a high priority and languished for a period of time.

When Congress began its review of the Title IX regulations, there developed several sustained efforts to limit their impact. In effect, Congress tried to change the original Title IX law by weakening it. The newly formed women's advocacy groups had to wage extended cam-

paigns to sustain Title IX. Even after its passage, women's groups had to go to court in order to mandate enforcement of Title IX. The Office for Civil Rights took the position that it did not have the staff to deal with complaints of sex discrimination, because court ordered enforcement of race discrimination complaints was consuming all of its staff time. Eventually, court action led to mandatory OCR action on Title IX discrimination complaints.

With congressional opposition, the long delay in implementation of regulations, and OCR's hesitancy in investigating complaints, one could be pessimistic and conclude that little progress has been made. Yet, in actuality, because of Title IX much progress has been made in providing educational equity for boys and girls. We are in a period of remarkable change in our educational system. We have seen rapid development in athletic programs for girls, co-educational physical education classes, and concerted efforts to eliminate sex bias in the curriculum.

This fastback will review the regulations of Title IX and provide interpretations that hopefully will help educators in securing educational equity in their schools.

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Overview of Title IX Regulations

Providing equal educational opportunity for boys and girls is a challenge facing American education in the Eighties. While race equity has been a concern for several years, the issue of sex equity has become a major issue since Congress passed Title IX of the Education Amendments of 1972.

Title IX (P.L. 92-318) is the first comprehensive federal law to prohibit sex discrimination in the admission and treatment of students by educational institutions. Educational institutions covered by Title IX are those that receive federal financial assistance. The preamble, Section 901 (a), states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance . . .

When proposed regulations for implementing Title IX were published in the Federal Register in 1974, they generated an unprecedented 10,000 comments, an indication of the confusion and controversy surrounding them. After many hearings the final regulations were adopted and became effective on 21 July 1975. Title IX regulations have been interpreted through clarifying memoranda issued by the Office for Civil Rights, through the judicial process, and through the legislative amendment process. Three such amendments, part of the Education Amendments of 1976, have been enacted and, therefore, modify the basic provisions of Title IX. The two that apply most directly are: 1) Activities held in conjunction with Boys' Nation, Girls' Nation, Boys' State and Girls' State are exempted from coverage under Title IX;

and 2) Title IX does not preclude father-son or mother-daughter activities which an institution provides, as long as these opportunities are reasonably comparable for boys and girls. These regulations may be grouped into six major sections: 1) Introduction, 2) Coverage, 3) Admission and Recruitment, 4) Education Programs and Activities, 5) Employment, and 6) Interim Procedures.

Introduction

Five basic procedural steps must be implemented by recipient school districts, several within 90 days and the others within one year. Recipients that have not implemented these procedural provisions are in technical non-compliance.

Notification of Title IX Policy. Those agencies and institutions covered under the Title IX regulation are required to disseminate a policy statement of compliance and nondiscrimination on the basis of sex. This policy must be formally communicated to all employees, students, parents of elementary and secondary students, employment referral sources, labor organizations, and organizations that have contractual business with the recipient. The Title IX policy must be publicized widely through local newspapers, school publications, student newspapers, and direct written communications with students, parents, alumni, and employees. Additionally, the policy statement of nondiscrimination should be a part of official documents such as job referrals, job announcements, program announcements, and official reports.

Title IX Compliance Coordinator. An institution or agency must designate a responsible employee (commonly called the Title IX coordinator). While ultimate responsibility for Title IX compliance rests with the institution's chief administrative officer, the regulation calls for designating an employee whose responsibility is the coordination of the recipient's effort to implement the Title IX regulations. (Recipient refers to any state or political subdivision or any instrumentality of the state, any public or private agency, institution, organization, or other entity or person who receives federal funds and is, therefore, covered by Title IX). For the purpose of this fastback, recipient refers to the local educational agency. Some school districts designate two

coordinators, one with responsibility for complying with employment requirements and the other responsible for compliance in the area of student treatment and policies.*

Grievance procedure. An internal grievance procedure to handle any complaints of discriminatory treatment from students and employees is required. The regulation is not specific as to how to establish and implement the grievance procedure, but what is required is a method that provides prompt and fair resolution of a complaint. It should be noted that the existence of an institutional grievance procedure does not prevent the filing of a complaint by the student or employee with the Office for Civil Rights. A dispute over handling of a complaint by a school district often leads to a further complaint being filed with the OCR. Additionally, the *Cannon* decision (see Legal Update section) has now provided for the right of action by an individual to act privately in bringing a complaint.

Institutional self-evaluation. Title IX calls for a self-evaluation by a school district for the purpose of identifying those sexually discriminatory practices that violate the Title IX regulations. While there is no specific form established for carrying out a self-evaluation, the process entails: 1) Assessing and evaluating present policies and practices in light of the regulations, 2) Modifying policies and practices that are found to be discriminatory, 3) Taking remedial steps needed to eliminate effects of past discrimination. A school district's self study portion should have been completed by 21 July 1976. It is required that a description of the remedial steps and other modifications be kept on file for a three-year period. After three years, evidence of the self study, modification, and remedial steps is no longer required. This presents a problem for OCR and for those trying to institute change unless school districts periodically update their self-evaluation.

Assurance statements. Form 639 is an assurance form issued by OCR. This form, which is sent to all educational agencies, must be filed and included with all applications for federal funds. This assur-

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*The discussion of this can be found in *Implementing Title IX: A Sample Workshop* by Shirley McCune, *et al.*, Resource Center on Sex Roles in Education. This and other McCune publications are among the very best Title IX material presently available. Much of this discussion is based on McCune's works.

ance form is a signed commitment to comply with the provisions of Title IX. Any federally funded application should make reference to the form or include a copy of it with the application. This assurance requires that necessary remedial action has been instituted not only to eliminate specific discrimination but also the effects of that discrimination. Thus, the district has the responsibility to assist the people discriminated against to catch up. Affirmative action by the district may also be required to overcome the conditions that previously limited the opportunities.

Coverage

This section deals with who is covered by and who is exempt from Title IX regulations.

Educational institutions operated by religious groups are exempt when the regulations are inconsistent with their religious beliefs. Military and merchant marine training schools are also exempt. Youth organizations such as YMCA, YWCA, Boy Scouts, and Camp Fire Girls are exempt because these voluntary service organizations are tax exempt, have always had single sex membership, and have members less than 19 years old. Student clubs and organizations in public schools cannot have sex segregated memberships, nor may the school cooperate with youth organizations which have sex segregated memberships.

The coverage provision regarding admissions applies to vocational education programs, professional schools, and public undergraduate schools. Public colleges which have traditionally had single sex student bodies and private undergraduate schools are exempt from Title IX.

Admissions and Recruitment

The admissions and recruitment section of Title IX regulations applies to vocational education institutions and selected post-secondary institutions. It also applies to special school programs where students have an opportunity to apply or are recruited. An example would be advanced placement courses or adult education programs. Students may not, on the basis of sex, be denied admission or subjected

to discriminatory admission practices. Discrimination in recruitment practices of those applicants for admission is also prohibited. Some of the admission practices prohibited include:

1. Discriminating against or excluding a person on the basis of pregnancy or related conditions (pregnancy should be treated as any other temporary disability).

2. Administering a test or criterion for admission that has a disproportionately adverse affect on members of one sex unless this test or criterion is shown to validly predict success in the education program or activity, and alternative tests are not available.

3. Treating an individual differently from another on the basis of sex.

4. Ranking applications separately on the basis of sex.

5. Applying any rule concerning the actual or potential parental, marital, or family status of a student that treats persons differently on the basis of sex.

6. Making pre-admission inquiry regarding the marital status of an applicant.

7. Applying numerical limits on the number or proportion of either sex who may be admitted.

Treatment of Students

The Title IX regulation relating to the treatment of students covers almost every segment of the student program. The treatment of students section is the longest section and to date has had the greatest impact. School districts must comply with the regulatory requirements of this section. Even those institutions whose admission practices are exempt must treat students, once admitted, in the required nondiscriminatory manner. Specifically,

> . . . no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or any other educational program or activity operated by a recipient . . .

Specific prohibitions that may not be violated on the basis of sex include the following:

1. Treating one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service.

2. Providing different aid, benefits, or services or providing aid, benefits, or services in a different manner.

3. Denying any person any such aid, benefit, or service; subjecting any person to separate or different rules of behavior, sanctions, or other treatment.

4. Discriminating against any person in the application of any rules of appearance.

5. Applying any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition.

6. Aiding or perpetuating discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees.

Course offerings or other activities must not be provided differentially on the basis of sex. While few schools are segregated on the basis of sex, there have been many instances where segregation has occurred within individual classrooms, school activities, and programs. These prohibitions apply to all areas including business, vocational, industrial, technical, physical education, home economics, adult education, and music courses.

An exception to the prohibition against sex segregation is in that portion of the health education class at the elementary and secondary level that deals exclusively with human sexuality. Such classes may be conducted separately for males and females. But, to separate all health education or biology classes on the basis of sex would violate Title IX.

Physical education and chorus classes have been an ongoing concern. Schools had to establish co-educational physical education programs no later than 21 July 1976 at the elementary level. At the secondary and post-secondary levels, recipients had to comply by 21 July 1978. When standards are developed and applied without regard to sex, students may be grouped by ability; but these standards of performance must be objective in nature. Students may (not must) be separated by

sex within their physical education class if the activities involve contact sports. Contact sports are currently considered to be boxing, wrestling, rugby, ice hockey, football, basketball, or other sports where the majority of the activity involves bodily contact. However, while teaching contact sport skills and rules, when bodily contact is not involved, the class should be taught in an integrated fashion.

Choruses of one (or predominantly one) sex are permitted provided both sexes have similar opportunities for selection. Therefore, schools may establish requirements based on vocal quality or range. If this results in a chorus or glee club composed predominantly of one sex, that is acceptable.

Exclusion of any person from admission to a vocational education program is not allowed if sex is the basis for exclusion. All vocational programs and activities must be made available to all persons. The same policy and criteria for admissions, courses, services, and comparable facilities must be used. The vocational program area has caused much comment and concern because of past inequitable practices.

Counseling and guidance services may not be provided separately on the basis of sex. Different tests or counseling materials (counseling materials cover many items like books, pamphlets, etc.) which treat males and females differently may not be used. When, for example, differential treatment is used in materials dealing with the same occupation and interest area, then their use must be shown to be essential to eliminate sex bias. Internal procedures should be established by the school to insure that counseling and test materials are not discriminatory. If during the self study or at another time, it is noted that the specific class has a disproportionate number of males or females (80% of one sex is a standard commonly used by OCR), the school system should take necessary steps to determine that this proportion is not the result of discriminatory counseling and placement practices.

The *Yellow Springs* case (see Legal Update section), as well as many others which are now developing, clearly shows that the athletics section of the regulations has caused the most consternation. The athletics section states that:

> No person shall, on the basis of sex, be excluded from participation in, be

denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate club or intermural athletics offered by a recipient, and no recipient shall provide athletics separately on such basis.

If separate teams are provided for boys and girls, selection procedures must be based on competitive skills, unless the activity is a contact sport. It should be noted that this provision is conditional. The word *may* rather than *must* is used. Therefore, the district also *may* provide only one team with boys and girls competing together, if it so desires. This is an option of the district.

If a team is provided for one sex and no similar team is provided for the other sex, athletic opportunity for one sex has been limited. A crucial issue in determining whether athletic opportunity has been limited is that of *interest*. If there is sufficient interest, members of the excluded sex must be allowed to try out for the one available team. For example, if there is no girls' track team, girls must be allowed to try out for the boys' track team. The only limitation is that the sport is not a contact sport.* Additionally, a school that has had five teams for boys and two teams for girls is also limiting overall opportunities for girls.

The Office for Civil Rights when determining equal athletic opportunity for both sexes considers the following factors:

1. Provision of supplies and equipment
2. Whether the selection of the sport and the levels of competition accommodate effectively the abilities and interest of both sexes
3. Medical and training services
4. Travel and per diem allowances
5. Academic tutoring and coaching opportunities
6. Compensation and assignment of coaches and tutors
7. Locker room, competitive housing, and dining facilities and services
8. Publicity
9. Scheduling of games and practice times

While unequal aggregate expenditures for teams of one sex or the other do not establish non-compliance, OCR will consider the failure

*The contact sport issue is now being challenged in court on 14th Amendment grounds.

to provide equity for one sex when assessing compliance and equal opportunity. Thus, while dollar for dollar equity is not required, OCR carefully scrutinizes failure to provide necessary funds so that opportunities end up equal.

A school may not provide differential treatment based on sex because of a student's actual or possible parental, family, or marital status. No student may be discriminated against or excluded from educational programs or activities (including any class or extracurricular activity) on the basis of pregnancy or related conditions unless the student voluntarily requests to participate in a separate program or activity. Pregnant students may be required to obtain a physician's certification for participation in a school program if all other students with physical or emotional conditions are required to obtain a physician's statement. If such a separate program for pregnant students is provided, that voluntary program should provide a special benefit and must be comparable to the program offered to all other students. It should be open to all students. Pregnancy must be treated in the same manner as any temporary disability in regard to medical benefits and related services to students.

Employment

Employment policies and practices of educational institutions are covered by the Title IX regulation.* Differential employment practices on the basis of sex are prohibited in: 1) access to employment, 2) hiring and promotion, 3) compensation, 4) job assignment, 5) leaves of absence, 6) fringe benefits, and 7) labor organization contracts. Some of the specific requirements include equal treatment of each sex in recruitment, referral, advertising, testing and interviewing practices, and application procedures. It is necessary when hiring, firing, and promoting to have equal opportunity for tenure, demotion, lay off, termination, rehiring, as well as in the application of nepotism policies.

*The question of the extent of employee coverage under the Title IX employment section is presently being considered by the courts. For the purpose of the discussion in this section, situational problems and questions about Title IX, employees are considered to be covered by the regulation. In the Legal Update section, where specific court cases are discussed, the question of employee coverage will be reviewed.

There must be equity not only in wages and salary but also in fringe benefits.

In dealing with job assignments, there should be equity in regard to assignment and placement, seniority, patterns of job progression and classification, and job descriptions. The policy and practices concerning leaves for temporary disability, childbearing leave, and child rearing leave must also not discriminate. This includes travel opportunity, vacation time, retirement plans, insurance plans, support for special training, or anything that affects the employment process.

Care should be exercised with pre-employment inquiries regarding marital status and sex. For example, it is not appropriate to ask the marital status of a person applying for a job. It is permissible to ask such questions only if such inquiries are made of both sexes (and if the information derived is not used to discriminate). No employment decision may be based on sex unless sex can be clearly established as a "bona fide occupational qualification" (BFOQ). A BFOQ must be essential to the handling of the job itself, not a supposed or stereotypic characteristic based on sex. The only bona fide occupational qualification which is discussed in the regulation is employment of an attendant of a locker room or toilet facility. Clearly, there are very few jobs with BFOQ limitations in education.

Generally, the regulation calls for equal treatment in all employment areas. For example, jobs cannot be identified for one sex or another; neither can there be separate pay scales based on sex. Jobs requiring the same skill, effort, responsibility, and work conditions require the same pay for both sexes. Schools are also required to establish a pregnancy policy regarding such matters as leave, seniority, disability income, and fringe benefits which treats pregnancy and related conditions the same as any disability (there is active court action on this issue). Likewise, differential promotion or tenure tracks based on sex would violate Title IX. In the enforcement of these employment conditions as well as other aspects of the regulation, Title IX takes precedence over state and local laws.

Questions and Answers About Title IX

While Title IX is always changing because of OCR interpretation, legislative ruling, and judicial comment, the following questions and responses are written in a non-legal style to provide an easy understanding of basic Title IX issues. For a more comprehensive understanding it is necessary to review specific cases, legislative intent, and the Title IX regulations themselves.

Question: *What is the difference between Title IX and the Title IX regulations?*

Title IX is a statute section of the Education Amendments of 1972. It is a law that forbids discrimination on the basis of sex in any educational program or activity receiving federal funds. Title IX regulations are the enabling legislation that interprets and implements the intent of the Title IX statute.

Question: *Does Title IX apply to men or only to women?*

Title IX prohibits discrimination against males as well as females. Both students and employees are protected from sex discrimination by educational agencies or institutions receiving federal funds. This applies to all students, both males and females. Usually discrimination against male students occurs in access to certain courses and with discipline practices. In the case of male employees, discrimination has generally involved disallowing childbearing leave or differentials in extra duty assignments because of sex.

Question: *Who is covered by Title IX?*

Almost every college, university, elementary, secondary, and preschool is covered by some aspect of the regulations. Clubs and other

organizations that receive federal funds directly, or through another recipient, for educational programs and activities are also covered by Title IX in some manner. Those covered are referred to as "recipients" in the regulations. Post-secondary social fraternities and sororities, Boy Scouts, Girl Scouts, YMCA, YWCA, and certain voluntary youth groups have been exempted. More recently, Girls' State and Boys' State were also exempted.

Question: *How does Title IX deal with the teaching of human sexuality.*

Title IX does not require that courses or specific instruction be provided in human sexuality. What is required is that any courses offered be available to both males and females. Human sexuality courses can be provided separately for boys and girls. Students may also be separated according to sex during the portions of their health classes that deal exclusively with human sexuality.

Question. *Who is exempt from the provisions of Title IX?*

The legislature specifically exempts military schools and also religious schools when Title IX regulations are inconsistent with their basic religious tenets. In regard to admissions, those private undergraduate colleges, non-vocational elementary and secondary schools, and public undergraduate schools that traditionally and continuously have been single-sex since their establishment are not included under Title IX. But even these institutions, which are exempt for admissions, must treat students in a nondiscriminatory manner once the students have been admitted.

Question: *Are textbooks and instructional materials covered under Title IX?*

Title IX regulations exempt texts and instructional materials from coverage. This exemption was due to the potential conflict with First Amendment guarantees of freedom of expression. However, the spirit of Title IX would call for recipients to take action to combat sex bias in instructional materials.

Question: *The Title IX regulation uses the term "athletics." What sports are included?*

The term "athletics" encompasses any sports that are part of interscholastic programs.

Question: *Must an educational institution provide equal opportunity in such categories of athletic programming as scheduling, per diem, and coaching?*

Educational institutions must provide equal opportunities in all of the categories described. However, equal expenditures in these categories are not necessarily required.

Question: *When are separate teams for men and women allowed?*

When selection is based on competitive skill or when the activity involved is a contact sport, separate teams may be provided for males and females. If separate teams are offered, an educational institution may not discriminate on the basis of sex in providing equipment, supplies, or in any other manner. Additionally, the institution must assure that the sports offered effectively accommodate the interests and abilities of members of both sexes. Sex separation during contact sports is not mandatory. When the sexes are separated, this should only occur during the participation in the contact portion of the activities. When boys and girls are separated according to ability, this ability must be assessed by an objective standard for each major activity.

Question: *We have only one instructor for our co-ed physical education class. Who is responsible for the supervision in the locker room of the students of the opposite sex?*

This is always a thorny issue. Locker room supervision need not be the responsibility of the physical education teachers. You might assign a paraprofessional or you might rotate locker room supervision among all staff members. This is frequently the case for hall supervision and cafeteria duty, so handling it similarly in the locker room should not prove impossible.

Question: *If enough females are interested in a basketball team in an education institution that has a male basketball team, is it required to provide a team for women?*

First, the question that needs to be answered is whether equal opportunities are provided in the selection of a sport and in the levels of

competition. Do the levels and selection effectively accommodate the interests and abilities of members of both sexes? If you offer basketball for men and there is no way to accommodate the interests and abilities of women, other than by offering a separate basketball team for women, then such a team must be provided.

Question: *May we separate boys and girls within physical education classes for special interests such as modern dance for girls and weightlifting for boys?*

Schools may permit students to select physical education classes or activities on the basis of their interests. The key is that all options must be open to boys and girls according to the same criteria. Thus, specifying modern dance for girls and weightlifting for boys would not be appropriate.

Question: *If there are not enough women interested in forming a women's track team, must a recipient allow an interested woman to compete for a position on the men's track team?*

Because athletic opportunities have previously been limited for women in track, the recipient should allow women to compete for the men's team if that sport is a non-contact sport such as track. Additionally, a school may refuse to allow men or women to participate on teams for the other sex if athletic opportunities have *not* been limited in the past, regardless of whether the sport is contact or non-contact.

Question: *Is a school exempt from the provisions of Title IX if its local athletic conference and its state athletic association forbid competition between boys and girls in non-contact sports?*

Title IX pre-empts all state or local laws or other requirements that conflict with Title IX.

Question: *May a school deny students admission to advanced vocational courses (advanced auto body, clothing II) if they do not have the prerequisite?*

Title IX requires equal access to courses for males and females. When students do not have the prerequisites for an advanced course because introductory courses were limited for students of that sex, equal opportunity requires that they be permitted to take a proficiency

test to demonstrate their qualifications. Thus, course prerequisites cannot be used automatically to screen out students.

Question: *How can we quickly determine whether there is discrimination in our counseling program?*

There is no easy way to determine discrimination in a counseling program. Some possible indicators of sex discrimination in counseling include: 1) disproportionate course enrollment; 2) "tracking" by sex within a specific program (For example, are your advanced placement, learning disability, adult education, remedial reading, or educable mentally retarded classes composed predominantly of one sex?); and 3) providing career counseling for boys and only personal counseling for girls. If these circumstances are present it does not necessarily mean that there is discrimination, but it is an indication of that possibility. Other areas of counseling that need to be reviewed and carefully examined include: 1) assigning students to a counselor on the basis of sex; 2) using sex-differentiated counseling materials; and 3) using sex-differentiated counseling procedures.

Question: *Is our school athletic department required to follow Title IX when the athletic department receives no direct federal aid?*

Yes. The courts have consistently considered athletics to be an integral part of the total educational program of public elementary and secondary schools as well as of colleges and universities. Therefore, an athletic department is fully subject to the requirements of Title IX even when federal funds do not go directly to the athletic department.

Question: *We have a dress code. Is this a violation of Title IX?*

No. Title IX simply requires that if there is a dress code, the rules must be the same for boys and girls. Therefore, if there is a restriction on hair length for males or against the wearing of jeans by females, these requirements must be the same for the other sex.

Question: *Must we provide the same number of athletic scholarships to women as we do for men?*

The regulation does not call for equality in the number of scholarships. What is required is that if athletic scholarships or grants-in-aid are provided, reasonable opportunity must be provided to members of

both sexes to receive a scholarship. The basic consideration is the number of students of each sex participating in that interscholastic or intercollegiate athletic program.

Question: *If we have separate letter clubs for male and female athletes, and if we award different athletic awards for males and females, are we in violation?*

This is questionable. Clearly, maintaining separate letter clubs would be a violation of Title IX. You cannot exclude students from any club on the basis of sex. In regard to the awarding of athletic awards, care must be taken not to violate the regulation. To award arbitrarily a letter for boys and a locket for girls is a clear violation. An acceptable solution is to offer a choice of awards. For example, the male or female athlete could select either a letter sweater or a letter jacket.

Question: *Must we rotate the scheduling of male and female events at our athletic facilities?*

You cannot discriminate in the scheduling of athletic facilities for either practice or the competitive event. It is a violation to provide consistently the gym for females' practice in the morning and males' practice in the evening. Similarly, to schedule male events on Friday or Saturday nights and female events on weekday afternoons is inequitable. An example of correct practice is to alternate the girls' and boys' basketball games on Friday evening. The early and late times likewise could be alternated.

Question: *If our school receives a gift of a nautilus machine for the boys' team, must we provide the same gift for the girls' team?*

Title IX calls for equal access to comparable equipment. A district has several options. If they accept the gift, then comparable equipment should be provided to the girls' team. This could be solicited from the community. If another piece of equipment is not available, then the school system should purchase comparable equipment. Another alternative might be to request that the gift be utilized for all sports. Equipment could then be centrally located and available for all athletes to use. The problem then is to insure that equity is provided in the use of the equipment.

Question: *Must we pay the girls' coaches as much as we pay the boys' coaches?*

Coaching stipends may not be different because of the sex of the students coached or the sex of the coach. Salary differentials are allowable but they must be based on objective factors. Some of these factors include the number of assistants, length of season, and number of games played. The salary differential may not be based on community pressure or technical aspects of the sport itself.

Question: *One of our male teachers has requested paternity leave. Must we provide this under Title IX?*

Title IX does not require a recipient to grant childbearing or paternal leave to its employees. But if maternity leave or childbearing leave is provided to women, it must be provided to men. Title IX calls for equal treatment and would, therefore, require this action.

Question: *Is it appropriate for a vocational school to limit the number of women they admit into a program because of limited job availabilities in the marketplace?*

This is a violation of Title IX. A school may not limit enrollment because of job availability in the marketplace. Nor may a school assist an employer who discriminates by referring students to the employer or by providing any other assistance.

Illustrative Situational Problems

This section discusses illustrative situations, many of which are adapted from actual OCR grievance rulings. Court action could change the recommendations given, so the examples described are not intended as rules of law. Official Title IX rulings, as with other civil rights questions, can only be given by the Office for Civil rights.

Compliance

Problem: Our school district has done little with Title IX. We have never developed a nondiscriminatory policy nor have we designated a compliance officer. We take the posture that the school system should do nothing until someone comes around and orders us to take necessary action. Are we in trouble?

Status: The district is in violation of Title IX. The Title IX procedural requirements specify that a policy statement and a compliance officer must be designated. The district also violates Title IX if it does not meet the other procedural requirements including the institutional self-evaluation and notification of employees, parents, and students regarding Title IX compliance policies and the development of a grievance procedure.

Recommendation: You must comply with each of the required procedural actions that include 1) developing a policy statement regarding nondiscrimination and Title IX compliance; 2) notifying students, employees, and parents of the policy; 3) designating a compliance officer; 4) developing a written grievance procedure and notifying students and employees of its existence; and 5) completing and instituting a self-evaluation with corrective steps. You should also

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provide workshops and other informational services to personnel explaining Title IX requirements. Additionally, a legal update should be provided to school board members and administrators to insure that they are not only aware of the Title IX requirement but also carry out the spirit of the law.

Extracurricular Activities

Problem: Our Future Secretaries Club is only for girls. In the student handbook gender-linked pronouns are often used in describing single-sex student organizations such as Future Secretaries, Arts and Crafts Club and Audio-Visual Club. Other portions of the handbook, including the philosophy statement, also use these gender-related pronouns. Are we in violation of Title IX because of this?

Status: You are in violation of Title IX. The regulation prohibits discrimination on the basis of sex in academically-related extracurricular activities of a school.

Recommendation: You should take action to insure that all academically-related clubs or extracurricular activities are open to all students without regard to sex. Student handbooks, yearbooks, and other school publications should be reviewed and any gender-linked pronouns or expressions which tend to imply a restriction or limitation on membership or participation based on sex should be removed.

Employment of Students

Problem: Our area vocational center assists students in finding positions with outside employers. Notices of employment opportunities are posted in the school. Some of these notices from the potential outside employers specify that only students of a particular sex will be hired. Are we in violation of Title IX?

Status: You are in violation of Title IX. It is your responsibility to assist the outside employer to recruit students on a nondiscriminatory basis. In the provision of assistance to any outside agency, organization, or person that makes employment available to any of the recipient students, Title IX prohibits discrimination against students on the basis of sex.

Recommendation: It is your responsibility to require assurance

from all agencies, organizations, and persons offering employment opportunities to your students that they do not discriminate on the basis of sex in their employment practices. Additionally, you should try to work with these employers so they recruit students without regard to sex. If you fail to receive this assurance, you should no longer accept their notices of employment opportunities, unless sex can be shown to be a bona fide occupational qualification (BFOQ).

Pregnancy

Problem: Our school system has a policy that requires pregnant girls to stay at home. We provide a tutor so they can keep up with their school work. One student wanted to attend regular classes in order to take part in school and extracurricular activities. Were we violating Title IX when we refused to allow her to attend?

Status: This is a violation of Title IX. It is illegal to exclude pregnant students from the regular school program. Neither can you require a physician's statement unless such a statement is also required of all students with temporary disabilities. A special program for pregnant students must be voluntary. Home-bound instruction must be provided to pregnant students if it is provided to all students with medical disabilities, but participation in this program would still be an option of the student.

Recommendation: You must allow the pregnant student to remain in the school if she so desires. You should develop a policy statement spelling out your policy for pregnant students. This statement should be made available to all staff so that they are aware of the policy. As a remedial step you might wish to contact all other pregnant students receiving home instruction and inform them of their right to attend the regular program.

Athletics

Problem: Because of Title IX we have been reviewing our athletic program and we are not sure if our practices are discriminatory. We have the following concerns: 1) Our male teams do not share uniforms and warm up suits. 2) In basketball the male team plays on Friday or

Saturday evening while our female team plays on weekday evenings. 3) Our collective bargaining agreement specifies that coaches of female teams are paid at a lower rate than coaches of comparable male teams. 4) Our locker room facilities for females are not up to par with that of the male team. It is smaller, has fewer shower heads, poorer ventilation, limited security, and no whirlpool equipment. 5) Our after school elementary school athletic programs are offered only for boys. 6) Our cheerleaders perform only at our male athletic events. Do we have a problem?

Status: Each practice cited is a violation of Title IX. The regulation provides that no person shall, on the basis of sex, be discriminated against with respect to any interscholastic athletic program offered by a recipient. Specific criteria are established under the regulations which assess whether a recipient complies with these requirements.

Recommendation: You must provide equipment and supplies equitably for both male and female athletic teams; therefore, the female teams should not be required to share uniforms. Female teams should be able to share the Friday and Saturday prime game times equitably with the male teams. The salary for male and female coaches must be equitable. Coaches of comparable sports must be paid at the same rate. Locker rooms and practice facilities provided to male and female teams also must be equitable. Similarly, if you have an after school athletic program for boys at the elementary level, one should be provided for girls. If you have cheerleaders perform at the boys' events, they should also perform at the girls' events.

Access to Courses

Problem: Our students may voluntarily request assignment to either home economics or industrial arts. If they do not submit a request, we assign the girls to home economics and the boys to industrial arts. Additionally, we assign seventh- and eighth-grade girls to a combined course that includes 12 weeks of home economics and six weeks of industrial arts. Are we in violation of Title IX?

Status: You are in violation of Title IX. The regulation requires that the recipient not discriminate against students on the basis of sex in the provision of any course or educational program. Specifically,

you should not require or refuse participation of students in industrial arts and home economics courses on the basis of sex.

Employment

Problem: We pay evening matrons in our system one dollar less per hour than janitors. While the work is somewhat comparable, we feel that the janitors may have to do more heavy work. This is not spelled out in our job descriptions but it has been common practice in our system. Are we violating Title IX?

Status: This is probably a violation of Title IX (see Legal Update). If your job descriptions do not specify specific different occupational duties for janitors and matrons, they should receive the same pay. Even if the job descriptions call for different work, the criteria would be based on whether the job requirements were bona fide occupational qualifications (BFOQ) based on sex. The only BFOQ noted in the regulation is locker and rest room attendant. Therefore, it is not likely that there is a major difference between matrons and janitors, and you should equalize their rates of pay.

Recommendation: Job descriptions should be reviewed and equity established. Matrons should have their salaries increased to a comparable level. You should review the past payment records of matrons to determine whether to provide back payment for services provided at the lower rate. Written policy statements should clearly spell out the various job requirements for all classifications. Applicants for these positions should be tested based on job-related criteria, not sex.

Honors and Awards

Problem: We have active communiy support for our schools. Community organizations assist us by providing honors and awards to students. The Daughters of the American Revolution Award is always given to a female student. The Rotary Club provides two awards, one to a girl and one to a boy. The prerequisites are that the students be in the top 15% of their class and above average in all other areas. Is this a violation?

Status: This is a violation of Title IX. Discrimination on the basis of sex in the provision of benefits and services to students is prohibited.

You cannot establish criteria which, on the basis of sex, restrict or deny students' opportunities to compete for or to receive honors. Similarly, you may not cooperate with outside organizations in the granting of awards or honors that consider the sex of the student as a criterion.

Recommendation: Your district should review its honors, awards, and scholarship policy to insure that the criteria used do not discriminate on the basis of sex. In this situation more qualified students may be passed over in order to reach a student of the appropriate sex. You should also review your policy of cooperating with outside organizations to insure that their criteria do not discriminate on the basis of sex. Any awards, honors, and scholarships where the criteria discriminate on the basis of sex should be revised, or you should cease granting them.

Differential Treatment

Problem: We have several female students in the auto-body class. The instructor does not appreciate their taking up space that could be used by male students. He makes no bones about this and does not provide them with the same opportunities for learning a trade. Is he violating Title IX?

Status: This is a violation of Title IX. The instructor is providing differential treatment to students on the basis of sex. This practice must not continue.

Recommendation: The female students should be provided special instruction to make up for the inferior instruction they have received in the past. All staff should be provided inservice training to make them aware of the differential treatment as well as other sex bias that occurs in our texts and instructional materials used in the vocational area.

Student Assignment

Problem: Our school system has a Dean of Boys and a Dean of Girls to administer its discipline program. Is this a violation of Title IX?

Status: This is a violation because the policy provides different treatment to students on the basis of sex. Title IX requires that no person shall, on the basis of sex, be subjected to separate or different rules of behavior, sanctions, or other treatment.

Recommendation: The school district should immediately discon-

tinue the practice of assigning students to deans on the basis of sex. You should establish and implement a written policy that insures equal treatment of males and females with respect to discipline. This policy should be disseminated widely to staff and students.

Admissions Practices

Problem: The instructor of our advanced clerical practices program would not allow a male student to attend the class until he could obtain a signed statement that, upon completing this two-year program, a job would be provided him. She felt this was correct because it is far harder for boys to obtain a secretarial position at the completion of the program. Are we violating Title IX?

Status: This is a violation of Title IX. The utilization of different criteria based on sex for admission to any vocational school or program is prohibited.

Recommendation: The student involved should immediately be allowed to take part in the program. The only alternative to this would be also to require all female students who enroll in the clerical practices program to obtain a signed statement that a job will be available. A policy statement should be developed to insure that nondiscriminatory standards for the admission into vocational courses is known by all staff. As a remedial step the school system should contact all male students to determine if any other interested male student was denied or discouraged from entering this program. If any are identified, they should be provided an opportunity to enroll. Additionally, all students should be made aware of their equal opportunity to enroll in any vocational course or program.

Physical Education

Problem: In our physical education programs we assign boys and girls to one section each period, but we separate the boys and girls in that one section with a female and male instructor as appropriate. This is done not only for contact sport activities but for all physical education activities. Is this a violation of Title IX?

Status: You are in violation of Title IX. You may not discriminate in the provision of physical education. The specific practice of separat-

ing students in physical education courses, except for contact sports, is a specific violation.

Recommendation: To correct this you should immediately assign students to classes, sections, and activities without regard to sex. You should provide clear guidance to your physical education staff concerning the techniques for nondiscriminatory grouping of students on the basis of athletic ability. They should also be instructed on providing objective, nondiscriminatory criteria for the grading of students in sex-integrated activities.

Harassment

Problem: Our counselors complained that a vocational teacher did not want any female students. He indicated that if one were assigned, she would be encouraged to drop out. A female student was scheduled and she did return in several weeks complaining of harassment and unfair treatment. Is this a direct violation of Title IX?

Status: This is clearly a violation of Title IX. Students, regardless of sex, who enroll in classes cannot be harassed.

Recommendation: The vocational instructor should not only be reprimanded but also be informed that he is violating Title IX. He should be required not to harass any female students in the future. The harassed student should be informed of what has occurred and be returned to the class. She should know that if harassment continues she should contact the principal directly. If a similar class is available it would be wise to transfer her into that class. A policy statement regarding the responsibility of teachers in such a situation should be developed. Students in other nontraditional classes should be contacted to determine if this practice is occurring.

Discipline

Problem: Our school district does not like to paddle female students. We try to provide alternatives to paddling girls. Boys are generally provided the opportunity to select from several punishments including paddling, detention, or suspension. A girl, for the same offense, might have the option of remaining after school or turning in a written assignment. Are we in violation of Title IX?

Status: It would appear that, based on this information, you are in violation of Title IX. The regulation prohibits you from subjecting students to separate or differential rules of behavior, sanctions, or other treatments based on sex.

Recommendation: You should take immediate steps to insure that all students subjected to disciplinary action are treated equally without regard to sex. Boys and girls committing identical behavior infractions should be provided the same sanctions. If boys are given the opportunity to select from several punishments, then girls should be able to select from these same punishments.

Counseling Materials

Problem: Our school district uses a vocational interest inventory as part of its counseling program. In reviewing the tests we noted that the forms are different for boys and girls. There are more occupations listed for boys than girls. Sex stereotyping is apparent because occupations such as doctor and dentist are on the boys' forms with nurse and dental hygienist listed for girls. Is it legal for us to use this test?

Status: Using this type of counseling material would violate Title IX. Separate interpretive guides and test forms for males and females are prohibited by Title IX unless these instruments are used in a nondiscriminatory manner. If they are used, then both boys and girls must be given both tests and provided nonsexist interpretations.

Recommendation: Your counseling staff should be instructed to discontinue use of this specific vocational interest inventory. Those students who have been counseled with such instruments should be given the opportunity to utilize both the male and female norms and receive both interpretations. The system should develop policy statements in regard to counseling and use of nonsexist texts and materials. Materials that explain nontraditional vocation and career options should be available and explained to counselors and students.

Jurisdiction

Problem: Our school district takes the position that the Office for Civil Rights has no jurisdiction over our school district's athletic program because that athletic program receives no federal funds. Thus,

OCR would not have jurisdiction over athletics and could not request data on the athletic program. Is this correct?

Recommendation: Your district should provide any information requested by OCR. The specific responsibility for enforcement of Title IX is vested in OCR. OCR investigates complaints and may also undertake general compliance reviews. Your failure to furnish information would constitute a violation of Title IX. Your refusal to furnish information constitutes noncompliance under section 106.71 of the Title IX regulation, 34 CFR part 106, which adopts and incorporates by reference section 100.6 (b) of the regulation implementing Title IV of the Civil Rights Act of 1964, 34 CFR part 100. The Title VI regulation would be the procedural authority under which OCR would begin administrative enforcement proceedings against your school district.

Intramural Activities

Problem: We conducted a student inventory of interest in various sports. It showed that almost as many girls as boys were interested in a football program. We provided a boys' football program on an intramural basis. Must we provide an intramural girls' football program to avoid being in violation of Title IX?

Status: You would not be in violation of Title IX if you did not provide an intramural football program for girls. Recipients are not required to allow girls to play on the boys' team or to provide a mixed-sex sports team when the sport involved is a contact sport. Depending on the level of interest and the number of girls who are interested in the program, it is possible that a girls' program should be provided. The answer would revolve around whether there was sufficient interest to develop an intramural program. Clearly, girls do not need to participate on the boys' team. The question of an intramural football program for girls cannot be answered completely without further information.

Recommendation: Gather further information.

Physical Education

Problem: Many girls have asked for wrestling as a physical education course. It is the opinion of both our counselors that this is not re-

quired by Title IX. They also feel that no girl would want to take part in such an unfeminine activity. Are we in violation of Title IX?

Status: This is a violation of Title IX. Elective courses in physical education must be provided to both boys and girls even though the activities may include contact sports. However, these contact sport activities can be conducted on a single-sex basis. The counselors' opinion is in violation of Title IX.

Recommendation: Physical education course electives should be reviewed so as to insure that all courses are open to both females and males. Those interested students should be allowed to take part in an elective physical education wrestling program. The counselors should be advised that their opinions are in violation of Title IX. As a remedial measure, policy guidelines regarding enrollment of students in physical education should be developed and shared with the staff and students.

Interscholastic Athletics

Problem: The boys' basketball team plays 10 more games per year than does the girls' team. This is a requirement established by our high school athletic association. We feel this might be a violation of Title IX because it limits equal participation for boys and girls. Is this, in fact, a violation of Title IX?

Status: This is a violation of Title IX. The rules concerning the length of season resulting in differential opportunities for girls and boys is prohibited by the regulation. The Title IX regulation takes precedence over any state athletic association policy or practice.

Recommendation: You should take steps to extend the length of the girls' season or to reduce the boys' season. Your state athletic association should be contacted because of the discriminatory impact its rules have on schools throughout the state. Each school has the obligation to comply with Title IX. While this is a matter of conflict in many states, clearly, the state athletic associations do not have authority to establish differential policies and practices. The Office for Civil Rights would require a district to develop and to implement uniform performance standards for male and female basketball teams to insure a comparable amount of coaching. It would also be a violation if female and

male basketball players received unequal coaching because: 1) the girls received fewer hours of coaching than the boys in proportion to the length of season and number of games; 2) girls' coaches were not allowed to scout the opponents when boys' coaches were; and 3) the boys' varsity coach had to "produce" in order to maintain his job, while no performance standard was required for the girls' varsity coach.

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Legal Update on Title IX

Very little Title IX case law has so far been developed. The Supreme Court will soon consider cases to decide whether Title IX covers employees as well as students. Other Title IX case law areas are slowly emerging. The intent of this section is not an exhaustive review but rather is illustrative. Legal citations are provided, where appropriate, for those who wish to explore specific situations in greater detail.

Athletic Association

Athletic associations granted standing to challenge Title IX

The National Collegiate Athletic Association was granted legal standing by the 10th U.S. Circuit Court of Appeals to sue the Department of Education. The appeals court reversed the earlier district court decision which held that the NCAA had no standing to sue because it could not demonstrate a personal injury. The appeals court's position was that the compulsion by unlawful government edict is injury in itself, thus giving the right to sue to the party claiming injury.

It is claimed by the NCAA that the Title IX regulation "forced its member schools to change athletic programming depriving them of the freedom to determine the educational programs most suitable to their institutions." The case was, therefore, sent back to the district court for trial on the merits. It is difficult to gauge the potential impact of the case, but it should open the door for state high school athletic associations to challenge the regulation.

Separate Athletic Teams

Gomes vs. Rhode Island Interscholastic League, (1979), D.C.—Rhode Island, 469 F. 659. Yellow Springs Exempted School District Board of Education vs. Ohio School Athletic Association 422 f. supp. 753 (s.d. Ohio 1978)

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A district court held that preventing a boy from playing on the school's only volleyball team, which had been limited to girls, was a violation of Title IX. The criterion of past limitation of athletic opportunity in volleyball had been met because the school currently sponsored no boys' volleyball team and had never previously sponsored one.

The Title IX regulation conforms to the traditional policy that girls and boys should be separated for contact sports. Separate teams are always permissible for contact sports. Therefore, the decision of whether both sexes can compete on the same team is left to the discretion of each individual school board. But schools should also consider the equal protection clause of the 14th Amendment to the U.S. Constitution. It says that no state shall ". . . deny to any person within its jurisdiction the equal protection of the laws." Many cases have been initiated under the 14th Amendment. These cases are against both public schools and high school athletic associations for enforcing rules that prohibit girls from participating on boys' athletic teams. The majority of the decisions have held that the denial of the right to participate is a denial of the equal opportunity guaranteed by the 14th Amendment. Girls have been allowed to compete on the boys' teams in these cases.

When separate athletic teams are viewed as a part of the constitutional requirements, apart from Title IX, the contact/noncontact distinction is less important. The absolute deprivation of opportunity, which occurs when girls are prohibited from participating solely on the basis of their sex, then becomes an issue for litigation. Such deprivations have been found in many contact sports cases. The Title IX provision that permits single sex teams in contact sports has been held unconstitutional at the district court level. Therefore, the situation can arise wherein a school that sponsors separate teams on the basis of sex would be in compliance with Title IX but may be at issue with constitutional requirements. Of course, constitutional requirements take precedence over the Title IX statutory requirements. This seeming conflict will be resolved in future cases.

Coverage

Caulfield vs. New York City Board of Education, USDC, 8/27/79
While the court has held that Title IX jurisdiction under "employ-

ment" regulation is questionable, court action has still occurred. OCR has even proceeded in selected employment cases on the theory that school employment practices that involve systematic discrimination against women in regard to supervisory practices, etc., would have a deleterious impact on students, who are the direct beneficiaries of the federal financial assistance. Thus, while direct OCR preview of employment practices under Title IX is questionable, action can be taken under the "infection theory" of jurisdiction, thus allowing the regulation of certain employment practices.

Admissions/Applications Forms

Office for Civil Rights ruling

The Office for Civil Rights recommended to American University that it delete references to marital status from its admission/applications forms. Title IX prohibits schools from asking marital status on its application forms. Specifically, OCR recommended that forms be changed to substitute the phrase "any other name" rather than "maiden name."

Sexual Harassment

Yale University, No. N-77-277, 2 July 1979

A Title IX suit was filed dealing with sexual harassment of a female student. A federal judge dismissed the suit of the former Yale University student who claimed she was given a lower grade when she repulsed alleged sexual advancements of her professor. The judge found that she failed to prove an improper advance was made or that she was adversely affected as a consequence. While the student did not win the case, this suit appears to establish the use of Title IX for sexual harassment cases. For a successful claim, proof must be shown that a demand for sexual compliance is made because of gender and that the course grade was conditional upon that compliance.

Intercollegiate Athletics

Title IX policy interpretation

The proposed Title IX intercollegiate policy has caused a great deal of comment. It was issued on 4 December 1979. One key issue still to be

determined deals with inclusion of football in calculating the equal per capita spending for each sex. Initially, the Office for Civil Rights supported a five-year phase-in period for football. Then it called for full compliance "for all sports without delay." OCR has also recommended that the standard against which all educational opportunities should be measured is a program where "the number of sports for all men and women students and percentages of male and female athletics . . . (is) . . . comparable to the percentage of male and female students enrolled in the institution." The final determination as to an intercollegiate athletic policy will have great import. Aspects of the policy could apply to secondary school athletic programs as well.

Parental Status

Perry vs. Granada Municipal Separate School District, 300 F., 753

The court held that exclusion of unwed pregnant students from the school program was a violation of Title IX. The rationale that they were so lacking in moral character that their presence would affect the education of the other students had not been proven at a fair hearing prior to their exclusion. Further, it was held that it was unconstitutional to arbitrarily equate unwed pregnancy with a lack of moral character.

High School Football

Appleby vs. Mountainview-Leowsalto Union High School District (C-80-3427-WHO)

Whether a girl may play varsity football is now being challenged under the 14th Amendment due process guarantee. At issue is whether she is being barred from playing varsity football in violation of the equal protection clause of the 14th Amendment. The claim is made that there is an "irrebuttable presumption" that women are unqualified to play football. This case has been filed as a class action suit.

Hiring Goals—Consent Agreement

Azewiola vs. Los Angeles Unified School District (80-03348 Consent decree pending)

In a sex discrimination suit filed under Title VII of the 1964 Civil

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Rights Act, the 14th Amendment equal protection clause, and the 1871 Civil Rights Act, a consent agreement has been reached between the Los Angeles School Board and 20,000 women employees. If the court agrees, this would settle the case. The consent agreement calls for recruitment, hiring, and promotion targets based on the number of qualified female job applicants, with the "application flow" as the guide. The agreement sets a goal of 50% promotion for all women school administrators during the decade. There is a call for an annual target of 40% female promotions to principalships and deputy administrator positions.

Employment Discrimination

North Haven Board of Education vs. Hoffstedler and Trumbull Board of Education, U.S. Department of Education (79-6136, -6247, -7747) (2nd circuit)

Federal appeals court decisions in the First, Fifth, Sixth, Eighth, and Ninth Circuits have all held that neither the statutory language nor the legislative history of Title IX justified its use in employment discrimination cases. Therefore, OCR has not been handling employment cases. Individuals had to file these cases under Title VII of the 1964 Civil Rights Act. Then, the Second U.S. Circuit Court of Appeals held that the legislative history of Title IX clearly established that it was intended to combat discriminatory employment practices covering students, teachers, or staff. This conflict between federal appeals courts makes a Supreme Court review more likely. In 1979 the high court refused to review the First, Sixth, and Ninth Circuit decisions. With a conflict now existing, the justices will probably consider the issue.

The argument is that Title IX, rather than Title VII of the 1964 Civil Rights Act, is the best instrument to attack sex discrimination in employment. When you separate employment out of Title IX, it is more difficult to look at the total educational process. For example, if female teachers are unfairly denied promotions, that would have an adverse effect on students because they would see no role models of women in administrative positions. The Second Circuit, however, held that it was not necessary to argue this "infection theory" to support the Title IX employment regulations. By relying heavily on statements by

Senator Birch Bayh, who introduced the legislation, they felt that faculty and staff were meant to be covered.

Threat of Federal Funds Cut-Off

Administrative law judge ruling

The refusal to sign the Title IX assurance form by Grove City (PA) may result in its federal funds being withdrawn under Title IX. This action has not been taken pending a court challenge. An administrative law judge ordered the federal financial aid for students cut off. This fund cut-off would include Basic Educational Opportunity Grant programs, Guaranteed Student Loan programs and "additional federal financial assistance" which the respondent institutions would be eligible to receive. This is the first such action of this type under Title IX.

High School Sports

OCR finding

California's high school athletic regulations may violate Title IX. OCR alleges that the California Interscholastic Federation regulations on high school sports provide unequal treatment of boys and girls in the number of sports approved, length of seasons, scheduling of contests, and assignment and compensation of officials. It was found that California schools are allowed to offer fewer sports for girls than boys. Additionally, California schools are prohibited, without regard to student athletic interests and abilities, from establishing an all girl team in eight specific sports. Seasons are generally longer for boys' sports than for girls' sports. Even when playing seasons are equal, in some cases boys' teams are allowed more practice time. Other charges which were made included scheduling of fewer games for girls' sports than boys'; fewer and less qualified officials being assigned to girls' sports; and payment of girls' sports officials a lesser amount.

Good Faith Defense

Owen vs. City of Independence, Missouri, U.S. Supreme Court, No. 78-1799 (16 April 1980)

It was held in *Owen* that local governments (which includes school districts) no longer can assert that they acted "in good faith" as their

only defense against liability for damages resulting from violation of a person's civil liberties. In the past, school districts could plead that their actions (even when they were unconstitutional) were taken in good faith. If the districts could show that their actions were reasonably legal, they were immune from liability for money damages. It is incongruous for a government to be permitted to disallow liability for an injury which it has caused. Now an "innocent individual harmed by abuse from a governmental authority is assured that he will be compensated for his injury."

Freedom of Speech

Fujiwara vs. Kent, U.S. District Court, Hawaii, (1979), 477 F., 509

A district court ruled that the First Amendment's freedom of speech rights were violated by a school district that fired employees for holding a press conference announcing that the school system was not in compliance with Title IX. It was held that the First Amendment protected the employees' right to comment publicly on the school's compliance or lack of compliance with Title IX and/or other civil rights statutes. The employees in this case were reinstated to their former positions with back pay, benefits, and attorney's fees awarded.

Equal Pay

EEOC vs. Hobard Township Community School Corporation—H-80-275

The Equal Pay Act requires equal pay for work involving "equal skill, responsibility, and effort." Hobard paid coaches according to a schedule (approved by the local teachers union) with a point system that put women coaches on a lower scale than the boys' varsity football, basketball, baseball, and track coaches. The points given for each position were multiplied by the base salary to get the total salary for each person. The Equal Employment Occupation Commission (EEOC) challenged this practice and has indicated that such suits would continue to be processed. These pay disparities violate the law when coaches' working time and duties are equal. EEOC does not necessarily look at the job titles; rather it looks at the essence of what is involved in the job. The long-term benefit in cases such as this is that female

athletes who want to pursue a coaching career will now have the same opportunities as male athletes who move into coaching.

Private Right of Action

Cannon vs. University of Chicago, 99 S. Ct. 1946

The right of an individual to file a private suit under Title IX regulations was created in 1979 by the *Cannon* decision. (The Court ruled that private law suits were necessary under Title IX to provide a meaningful remedy for individuals.) Previously, the courts had felt the federal administrative complaint procedure provided an individual with adequate protection. If a court does find that a violation has occurred in a private case, the school system may be ordered to pay costs and attorney's fees. This decision makes it even more important for the school district to develop and utilize its internal grievance procedure. The intent of the Title IX regulation is to correct inequities at the level at which they occur and thus avoid court action. If a school system implements its grievance procedure in good faith with a fair and impartial approach, it will avoid most difficulties.

Suggestions for Administrators

The following suggestions are offered to administrators in districts that are either initiating or are deeply involved in Title IX review.

1. *Review Title IX Procedural Requirements.* Many school districts have not yet completed those basic procedural requirements that were required during the first year. This initial review involving notification, appointment of a coordinator, development of a grievance procedure, self-evaluation, and assurance should be the first step.

2. *Conduct a Needs Assessment.* A school administrator truly interested in Title IX change should initiate a systemwide needs assessment using a review committee. There are several needs assessment techniques and instruments available, ranging from pencil-and-paper assessments to a naturalistic inquiry approach. A good beginning point would be to pull out the self study which was required as part of the initial Title IX requirement in 1976. This self study, which was in itself a needs assessment, can be the basis to conduct a new and more comprehensive assessment of Title IX needs.

3. *Develop an Internal Support System.* As you are developing a needs assessment review committee, you should plan inservice training. This inservice program should begin with the school board and several key central administrators to whom you must "sell" the sex equity concept. They become the internal Title IX support system. While it is important that legal issues and other mandatory requirements of Title IX are observed, a district's internal commitment to the principles of equity underlying Title IX is more important. The Office for Civil Rights and established judicial precedent require that certain procedures be carried out by your school district, but the experience has

shown that the success of implementing change on behalf of sex equity can be traced directly to a commitment on the part of key administrators and the school board.

4. *Develop a Sense of Shared Commitment.* Teachers and others involved in the Title IX process need to develop a sense of commitment to Title IX goals of sex equity. You are more likely to get this commitment to and support of Title IX if you start with a group of volunteers in a Title IX inservice program. As an example, the Great Lakes Sex Desegregation Assistance Center (GLSDAC) at Indiana University trained a volunteer group of elementary teachers in one school system so that they in turn would be able to lead Title IX seminars and programs. By selecting volunteers and using a training design wherein teachers knew that they would be required to train others, a different level of understanding developed. These teachers were more committed and spread the word to their colleagues about the need and value of Title IX.

5. *Be Sure You Understand Title IX.* If you as teacher, principal, or superintendent wish to bring sex equity to your school system, it is important that you yourself understand Title IX. Taking a strictly legalistic approach to Title IX is no substitute for voluntary commitment to and comprehensive understanding of this far reaching legislation.

6. *Implement Initial Training Activities.* One effective initial activity is training key staff about the grievance procedure. Learning about proper grievance procedures will help, in many cases, to keep grievances from occurring. A second area for early review might be curriculum and materials analysis. There are instruments available which allow teachers to review a system's curriculum and educational materials to determine whether they are sexist in nature. A third area might be self-awareness training wherein teachers review their own behaviors with students to see if they exhibit any sexist attitudes.

7. *Develop a Remedial Plan of Action.* When past discrimination on the basis of sex is discovered, remedial action must be taken. For example, if you determine that a disproportionate number of males are enrolled in a particular course, specific remedial action to encourage the enrollment of female students might include: 1) a special recruit-

ment effort, 2) revision of any offensive course curriculum, 3) compensatory activities or programs in areas where girls have been traditionally excluded, 4) mini-courses where students can attend introductory presentations, and 5) special support for students entering nontraditional classes for the first time.

The issue of sex equity is one more reflection of our changing culture. It will not go away. But it has required the power of federal law in the form of Title IX to convince some that equality for all means just that. We still have a long way to go. Hopefully, the discussion and interpretation of Title IX presented in this fastback will help educators continue on the way.

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